

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6096 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JIVANBHAI MERUBHAI RATHOD

Versus

G E B

Appearance:

MR TR MISHRA for Petitioner
MS MAYA DESAI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/09/1999

ORAL JUDGEMENT

#. The petitioner, a helper in the office of respondent No.2, by this Special Civil Application under Article 226 of the Constitution of India is praying for twofold prayers. First prayer has been made for quashing and setting aside the order dated 28.1.86, annexure-G, at page No.29, under which the benefits of higher pay scale given to him were taken back and further recovery of the

excess payment made to him from 4.9.84 has been ordered. Second prayer has been made for directions to the respondents to consider his case for promotion to the post of Lineman from the date on which his immediate junior has been promoted.

#. In the Special Civil Application specific reference has not been made to the case of the junior persons but in the document, annexure-A at page No.11 of the Special Civil Application, the petitioner has given or/and made reference of the junior persons who were given promotion to the post of Lineman.

#. In the reply to the Special Civil Application, the respondents have not given out any reason as to why the case of the petitioner for promotion was not considered when his juniors were given promotion. Orally, Ms.Maya Desai, learned counsel appearing for the respondents has given out that the petitioner was called for interview but he has not appeared in the interview and as such he was not given promotion. I also find from the Special Civil Application that the petitioner was called for interview for the post of Assistant Lineman which was scheduled in April 1982 and he has not appeared therein. The petitioner has given explanation for this in the Special Civil Application and that explanation has not been controverted by respondents and as such it has to be accepted and accordingly it is accepted.

#. Challenge to the order dated 28.1.86 is made on the ground that the petitioner was given promotion on the post of Assistant Lineman instead of on the post of Lineman and he was ready to go elsewhere in case he is promoted on the post of Lineman. It is unfortunate that none of the learned counsel for the parties have cared to produce on record of the Special Civil Application, the relevant rules, regulations for recruitment and promotion on the posts of Assistant Lineman, Lineman, etc. as well as other relevant General Standing Orders. However, I had an occasion to deal with the General Standing Order No.247 and Circular No.231 dated 26th May 1975 and I have taken the view that where on promotion, an employee who has been given benefit of higher grade declines to join at the place where he has been posted, the benefits of the higher pay scale given to him were liable to be taken back and the excess payment made has to be recovered. In this case, I find that the petitioner was given promotion on the post of Assistant Lineman and he has declined to join on the promotional post and as such the respondents are within their competence and legally justified to pass the order dated 28.1.86. The benefits of higher pay

scale are only available and continue to be enjoyed if on promotion the employee has carried out the promotional order. Otherwise, the very purpose of this Scheme will be frustrated and it will become very very difficult for the Board to get the employees at the place of requirement or necessity. Challenge to the order dated 28.1.86 cannot be permitted as the order is perfectly legal and justified and in consonance with the General Standing Order No.247 read with para-8 of the Circular No.231 dated 26th May 1975. The Specail Civil Application to the extent it relates to challenge to this order is dismissed. Rule discharged.

#. So far as the prayer of the petitioner regarding his promotion to the post of Assistant Lineman / Lineman is concerned, the respondents are directed to consider his case for promotion to these two posts in accordance with relevant rules and regulations of the Board or the General Standing Orders with reference to the date on which his immediate junior has been given promotion. In case the petitioner is found suitable for promotion, then he shall be entitled for all the consequential benefits following therefrom but where he is not found suitable for promotion, a reasoned order may be passed and a copy of the same may be sent to the petitioner by registered post A.D. To this extent, this Special Civil Application and Rule stand disposed of accordingly with liberty to the petitioner for revival of this Special Civil Application in case of difficulty. No order as to costs.

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[sunil]